sonable, prudent man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do under all the circumstances surrounding and characterizing the particular case; and in this case it is the duty of the jury to consider the age and experience and extent of judgment of the boy, and the nature of the service demanded of him, in respect to its being hazardous to life or limb or otherwise.

If a reasonable and ordinarily prudent man would not have ordered a boy of his age, under the circumstances, upon such a service, because it was dangerous, then it was a negligent and wrongful act; but if it could not by a man of reasonable prudence and sagacity have been foreseen, that the service demanded was perilous, the company is not liable, although the act required of the boy was one not falling within the scope of his employment.

This is an action by the father for loss of service of the son, and under the pleading he can only recover pecuniary damages, which includes actual or necessary expenditures, for supplies for the son during his recovery; the value of his and his family's necessary attention to the son, and the value of the loss of the services of the son from the date of the accident down to the time of trial.

Court of Common Pleas of the City of New York.

THE PASSAIC MANUFACTURING COMPANY *v.* WILLIAM HOFFMAN ET AL.

Under the Statute of Frauds a distinction is made between a contract for the sale of goods and one for work and labor in the manufacture of them. The former only is made void by the statute unless it be in writing.

Where the contract is for an article coming under the general denomination of goods, wares, or merchandise, and is made with one who makes and sells that kind of article to all who traffic in it, the quantity required and the price being agreed upon, it is a contract of sale, whether the maker and vendor has the required quantity on hand or has to make it afterwards.

But if what is contemplated by the agreement is the skill, labor, care, or knowledge of the maker; or if it would not have been produced except for the order; or if it is ordered at a certain price with the knowledge that the maker is not supplied and will have to make it; or if, when produced, it is unfitted for sale as a general article of merchandise, being adapted only for use by the person ordering it, then the contract is one for work and labor, and not within the statute.

The cases on this subject examined and discussed by DALY, C. J.

The opinion of the court was delivered by

DALY, C. J.—The first question and indeed the main one in this case is whether the contract upon which the action was brought was void by the Statute of Frauds. It involves these inquiries: 1st. Whether the contract was one within the statute. 2d. If it were whether there was a sufficient note or memorandum in writing; and 3d. Whether there was that partial delivery and acceptance of a portion of the goods which the statute requires.

What the statute has in terms declared void is every contract for the *sale* of goods, chattels, or things in action for the price of $50 or more unless there has been a partial delivery and acceptance, or a payment of some part of the purchase-money or a memorandum in writing subscribed by the parties; but simple as this enactment is the greatest difficulty has been experienced in determining in many cases what is a contract for the sale of goods and chattels within the meaning of this provision.

At an early period a distinction was made between a contract for the sale of an article and one for the fabrication or manufacture of it; the latter in general terms being regarded as a contract for work and labor and not a contract for sale, though the article when manufactured and ready for delivery would, as a personal chattel, come under the denomination of goods, wares or merchandise. Thus where a party contracts for the production of something in which the skill and labor of the person who fabricates it is combined with the material which he employs, as in the production of a statue or of a painting in which the material is comparatively unimportant and the skill and labor is the chief ingredient, it was regarded as a contract for work and labor and not for the sale of the painting or the statue, even though the price to be paid had been previously agreed upon.

In the case here put by way of illustration the distinction is obvious; but there are many contracts in which work or labor has to be performed after the contract is entered into, which are in their inception contracts of sale and do not lose that character because work and labor has to be executed to perform them.

Work and labor may be necessary in the delivery of the thing sold, or to put it in a condition for delivery, which is very different from where it is bestowed in the creation or production of the article contracted for. But even in the latter case the contract may be in its nature one of sale.

It is a matter of every day occurrence that contracts are made for the purchase at a fixed price of a certain quantity of goods from those who manufacture them for the general purpose of sale as an article of traffic, which the manufacturer is not able at the time to supply but which he undertakes to furnish by a given time, or as soon as that quantity can be manufactured, which have been regarded as essentially contracts of sale within the meaning of the statute, and as fully within the mischief which it was intended to guard against as if the article had existed *in solido* when the contract was made for the sale of it.

But where the contract is for the production of an article of a peculiar kind, or it is the skill, labor, care, or knowledge of the person or manufacturer who is to produce it, which is relied upon, then it is the manufacturing which is the chief ingredient and which in this country

at least is regarded as making it a contract for work and labor, and not one for the sale of the article.

It is, however, sometimes very difficult to determine whether the contract is simply for the product itself as an article of trade, or for the peculiar skill, care, or knowledge which is to be bestowed in the production of it.

The case now before us is one that involves that inquiry, and as there has been considerable conflict in the authorities as to what is or is not a contract of sale within the meaning of the statute, it will be necessary to inquire into the present state of the law, and amid the conflict of adjudged cases ascertain the rules that now govern in the interpretation of the statute.

It may be stated, as the result of several well-considered cases, that where the contract is for an article coming under the general denomination of goods, wares, or merchandise, and it is made with one who manufactures and sells that kind of commodity to all who traffic in it, the quantity required and the price being agreed upon, it is a contract of sale, and that it in no way affects the character of the contract in such a case, whether the manufacturer and vendor has when the order is given the requisite quantity on hand or has to manufacture it afterwards, *Gardner* v. *Joy*, 9 Metc. 179; *Lamb* v. *Crofts*, 12 Id. 356; *Atwater* v. *Howe*, 29 Conn. 508; *Eichelberger* v. *McCauley*, 5 Har. & Johns. 213; *Cason* v. *Chuly*, 6 Geo. 514; *Garbert* v. *Watson*, 5 Barn. & Ald. 613; *Smith* v. *Surnam*, 9 Barn. & Cress. 561; *Watts* v. *Friend*, 10 Id. 446; *Wilks* v. *Atkinson*, 6 Taunt. 11; *Jackson* v. *Covert*, 5 Wend. 140; *Smith* v. *N. Y. Cen. Railroad Co.*, 4 Keyes 180.

But if what is clearly contemplated by the agreement is the skill, labor, care, or knowledge of the one who fabricates the article, or if it would not have been produced if the order had not been given for it, or if, when produced, it is unfitted for sale as a general article of merchandise, being adapted only for use by the person ordering it, then the contract is one for work and labor, and is not within the statute: *Spencer* v. *Cone*, 1 Met. 283; *Mixer* v. *Howarth*, 21 Pick. 207; *Hight* v. *Ripley*, 19 Maine 139; *Cumming* v. *Dennet*, 26 Id. 401; *Allen* v. *Jarvis*, 20 Conn. 38; *Cason* v. *Chuly*, 6 Geo. 554; *Crookshanks* v. *Burrill*, 18 Johns. 59; *Cartwright* v. *Stewart*, 19 Barb. 455; *Parker* v. *Schenck*, 28 Id. 38; *Mead* v. *Case*, 33 Id. 202; *Clay* v. *Gates*, 1 Hurl. & Norm. 73.

The distinctions here presented as tests to determine whether a contract is or is not within this provision of the statute, though founded, as I have said, upon the authority of well-considered cases, have not been very closely adhered to in this state, there being several decisions in our reports in which contracts have been upheld as contracts for work and labor, not upon the ground that what was contemplated was the skill and labor of the one who was to furnish the article, but because the article was not *in solido* when the contract was entered into, but was to be made *afterwards*, either in whole or in part, from the raw material.

Thus, in *Sewell* v. *Fitch*, 8 Cow. 215, an order was given to the plaintiffs' agent in this city for 300 casks of Thames cut nails, at 5½ cents per pound, and the agent having stated when the order was received that the plaintiffs had not that quantity on hand but that it

could soon be made and obtained from the plaintiffs' manufactory in Norwich, Conn., it was held not to be a contract for sale, but for work and labor.

The contract in this case of *Sewell* v. *Fitch* might perhaps have been sustained upon the ground that "Thames cut nails" was an article of a peculiar kind which the plaintiffs manufactured, or one the distinctive quality or especial excellence of which may have been owing to the skill, ingenuity, or experience of the manufacturers; but this was not the reason given by the court, nor, so far as indicated by the report, was there anything in the case except the specific name, "Thames cut nails," to distinguish the particular article from nails in general.

Sewell v. *Fitch* was followed in the still more doubtful case of *Down* v. *Ross*, 23 Wend. 270, BRONSON, J., dissenting, in which a contract for a certain number of bushels of wheat, at 10 shillings per bushel, was upheld upon the ground that a part of it was then unthrashed, which the vendor agreed to get ready, as well as to give the whole of it a second cleaning, and deliver the entire quantity by a specified day; a case, however, which must now be regarded as repudiated since the recent decision of the Court of Appeals in *Smith* v. *The N. Y. Cen. Railroad Co*, 4 Keyes 199, in which a contract for a quantity of wood at a certain price per cord, which was thereafter to be cut from standing trees, measured into cords, and delivered at a railroad station, was held to be a contract of sale within the meaning of the statute, and not one for work and labor.

The decision of the Supreme Court in *Sewell* v. *Fitch*, though regarded as erroneous, was followed by the Superior Court of this city in an analogous case, in *Robertson* v. *Vaughn*, 5 Sandf. 1. The court adhered to it simply because it had been decided for many years, and had doubtless been followed in numerous instances by inferior tribunals in the state, and under these circumstances it was thought better that the error involved in the decision should be left to be corrected by the court of last resort.

It was also followed in *Donovan* v. *Wilson*, 26 Barb. 138, the same reason being assigned, that the error should be corrected by the Court of Appeals.

These reasons are now no longer of any weight, the decision of the Court of Appeals in *Smith* v. *N. Y. Cen. Railroad Co.*, *supra*, being directly in conflict with the construction put upon the statute in *Sewell* v. *Fitch*.

A brief review of a few cases will suffice to illustrate the construction given to the statute.

Thus, the early and much-discussed case of *Towers* v. *Osborne*, 1 Strange 506, the report of which simply states that the defendant bespoke a chariot and *when it was made* refused to take it, has been upheld on the ground that the chariot which was ordered to be made would never, but for that order, have had any existence: per ABBOTT, C. J., in *Watson* v. *Garbut*, 5 Barn. & Ald. 613, which WOODRUFF, J., considered an extreme case, that ought not to be carried any further: per WOODRUFF, J., in *Smith* v. *N. Y. Cen. Railroad Co.*, *supra*. But in *Mixer* v. *Howarth*, 21 Pick. 207, where all that was done by the defendant was to select the lining which was put upon the carriage, it was held

not to be a contract for sale of the carriage within the meaning of the statute.

An analogous case to both of these was *Crookshanks* v. *Burrill*, 18 Johns. 58, in which the plaintiff contracted to make the woodwork of a wagon for which the defendant was to pay in lambs at a certain price per head, which was held not to be within the statute.

In *Parker* v. *Schenck*, 28 Barb. 38, the defendant directed a pump to be manufactured in a peculiar way so as to adapt it to a use to which he meant to apply it, which was deemed sufficient to make it a contract for work and labor.

In *Parsons* v. *Louck*, 4 Robertson 216, the agreement was for the manufacture thereafter of ten tons of paper at a specified price per pound; the paper to be of a particular description, and of such sizes and weights as the defendant should thereafter direct by letter, which was also held to be a contract for work and labor.

Analogous to this was the case of *Hight* v. *Ripley*, 19 Maine 139, where the plaintiff was to furnish a quantity of malleable hoe-shanks according to *pattern* left with him, in which a like decision was rendered.

In *Mead* v. *Case*, 33 Barb. 202, the defendant selected a marble monument, consisting of several parts, which were put together, and which were standing in the plaintiff's yard or shop. By the defendant's instruction the monument was polished, and an inscription cut upon it embracing the names of the defendant's deceased father, mother and sister, that it might be put as a memorial over their place of burial. This was held not to be within the statute. E. DARWIN SMITH, J., dissented in an elaborate opinion, but the decision was clearly correct, as the monument, when the epitaph or inscription which the defendant desired, was cut upon it, was fit only for use in that state as a memorial to indicate the burial-place of the defendant's relatives. It was converted into a thing capable of being used only by himself or by his connections, and in that state was unavailable to the plaintiff for sale as an article of merchandise.

To illustrate what is within the statute, the case of *Cason* v. *Chuly*, 6 Geo. 554, may be cited, in which the agreement was for a crop of cotton to be delivered as soon as it could be gathered and prepared for market. The court held it to be a contract of sale and not of work and labor, for, said the court, the work and labor would have been bestowed in the production of the article, if the contract had not been made, and they distinguished it from the making or production of an article unsuited to the general market, likening it to the case of the manufacture of goods wherein the manufacturer does not necessarily lose the result of his labor, for the reason that if the purchaser does not take the goods, others will. And to the like effect are the cases of *Garbut* v. *Watson*, 1 Dow. & Ry. 219; 5 B. & Ald. 613; *Smith* v. *Surman*, 9 B. & C. 561; *Watts* v. *Friend*, 10 Id. 446; *Lamb* v. *Crofts*, 12 Met. 356; *Wilks* v. *Atkinson*, 6 Taunt. 11; *Smith* v. *N. Y. Central Railroad Co.*, 4 Keyes 180.

In *Atwater* v. *Hough*, 29 Conn. 508, it was held that a contract for 100 sewing-machines, part of which were not finished, but which were to be completed and delivered in the course of the summer, was a contract of sale within the meaning of the statute, and the same construction

was put upon the contract in *Gardner* v. *Joy*, 9 Met. 179, in which the defendant asked the plaintiff his price for candles, and the plaintiff named it. The defendant then ordered 100 boxes, upon which the plaintiff replied that the candles were not then manufactured, but that he would manufacture and deliver them in the course of the summer, and this was held not to be an agreement for work and labor but a contract of sale. This is what may be called a very close case as well as the one that precedes it, *Atwater* v. *Hough*, *supra*, both of which, however, should be distinguished by the fact that it does not appear in the report of either case that it was *any part* of the bargain that the vendor should manufacture the article contracted for: Browne on the Statute of Frauds 307; *Eichelberger* v. *McCauley*, 5 Har. & John. 213. This fact was especially relied upon as distinguishing the agreement for the manufacture of the malleable hoe shanks in *Hight* v. *Ripley*, 19 Maine 137, from an ordinary contract of sale, the court remarking that in contracts like the one before them "the person ordering the article to be manufactured is under no obligation to receive as good or even a better one of the like kind purchased from another, and not made for him. It is the peculiar labor and skill of the other party combined with the materials for which he contracted, and to which he is entitled," and in a later case in the same state, *Cummings* v. *Dement*, 26 Maine 401, the distinction is laid down more broadly in these words: "If the application is made to a manufacturer or mechanic for articles in his line of business, and he undertakes to prepare and furnish them by a given time, such a contract, though not in writing, is not affected by the statute," and Chief Justice SHAW, by whom the opinion of the court was delivered in *Gardner* v. *Joy*, *supra*, in a later case, *Lamb* v. *Crofts*, 12 Met. 356, declared the distinction to be as follows:—"Where a person stipulates for the *future sale* of articles which he is habitually making, and which at the time are not made or finished, it is essentially a contract of sale and not a contract for work and labor. Otherwise where the article is made *pursuant to the agreement.*" The distinction here drawn serves to explain and limit the previous decision of the same court in *Gardner* v. *Joy*, *supra*, but as a rule it is not very clear or very satisfactory.

It may be stated as a conclusion to be derived from these cases that if an order is given to a manufacturer for a certain quantity at a certain price of an article which he is habitually manufacturing and keeps on hand to supply orders, it is in general terms to be regarded as a contract of sale, and should be in writing to make it binding, for the party giving such an order is not called upon to inquire what quantity the manufacturer has on hand or whether it will or will not be necessary to manufacture it in whole or in part to fulfil the order.

But if, with the knowledge that the manufacturer is not supplied with the article ready made, the party orders a certain article to be manufactured at a certain price, then it is an agreement for the production of the article and not for the sale of it, after it is produced; for it may be that but for the order the manufacturer would not at that time, in the ordinary prosecution of his business, manufacture such a quantity, for the reason that it may, by the time it is manufactured and ready for delivery, depreciate in value in the market as was the fact in the case now before us. "*Ex æquo et bono*," says NESBETT, J., in *Cason* v. *Chuly*, *supra*, "a man who agrees to bestow his labor in the

manufacture of goods for a price, and which price he must lose unless the goods are received by him who ordered them, ought to be paid, and a statute which would protect the purchaser from liability in such a case would be alike impossible and unjust." It might be answered that the mechanic or manufacturer can protect himself by having the contract put in writing, but that is evading the inquiry, the question being, whether the statute in terms includes such a case, and in my judgment it does not.

"It would," says ROBERTSON, C. J., in *Parsons* v. *Louck*, *supra*, "be a somewhat novel and startling doctrine to decide that a tradesman must have every contract put in writing with his customers to manufacture articles of dress or furniture, in order to bind the latter to pay for them," and yet the statute has been carried to this extent in a recent decision in England, *Lee* v. *Griffin*, 1 E., B. & E. 272, in which it was held that an agreement for the making of a set of artificial teeth, to be fitted to the mouth of the person ordering them, was not an agreement for work and labor, but a contract of sale, and was void for not being in writing.

Indeed of late years the judges, especially in England, with the design, as they express it, of bringing the statute back to its true interpretation, are disposed to go to such lengths in holding cases to be within it, that its construction is in a fair way of becoming now more uncertain than ever.

"I do not," says CROMPTON, J., in this case of the artificial teeth, "agree to the proposition that the value of the skill and labor as compared to that of the material supplied, is any criterion by which to decide whether the contract is for work and labor or for the sale of a chattel. It bears a strong resemblance to that of a tailor supplying a coat, the measurement of the mouth and the fitting of the teeth being analogous to the measurement and the fitting of a garment."

HILL, J., went farther: "Whenever a contract is entered into," he says, "for the manufacture of a chattel, then the subject-matter of the contract is the sale and delivery of the chattel, and the party supplying it cannot recover for work and labor." A conclusion which if followed would overturn a number of American cases—indeed every one that I have cited in which the contract was held not to be within the statute.

Justice BLACKBURN, who also concurred in this judgment, undertook to lay down a rule to distinguish what was and what was not within the statute, or rather what was a contract of sale as distinguished from one for work and labor. "If the contract be such," he says, "that when carried out it would result in the sale of a chattel, the party cannot sue for work and labor; but if the result of the contract is that the party has done work and labor which results in nothing that can become the subject of sale, the party cannot sue for goods sold and delivered." He gives the case before the court of the artificial teeth as an illustration of the first part of this rule, and of the second the case of an attorney employed to prepare a deed, in which case he says, "it cannot be said that the paper and ink he uses in the preparation of the deed are goods sold and delivered."

The effect of the rule here laid down is to convert every case of work and labor into a contract of sale if the result of the work and labor be a product or movable thing which is capable of transfer by delivery, a

construction, in my judgment, unwarranted by the language which was used in the enactment of the Statute of Frauds and the sense in which the language was interpreted by judicial decision for more than a century and a half.

What the statute declared must be in writing to be valid, was any contract for the *sale* of *goods*, *wares*, or *merchandise* for the price of 10*l.* or upwards.

What was meant by these words *goods*, *wares* and *merchandise* at the time of their enactment, not simply their etymological meaning, but what was understood by them in their popular and in their legal sense, may be ascertained by referring to the English dictionaries by which they were first defined.

They are not to be found in the earlier works for the reason that the first English dictionaries were limited to the explanation of foreign or unusual words, or as expressed in their titles they were "Expositors" or "Interpreters of Hard Words."

The earliest work in which the meaning of words in ordinary and popular use was given is "Phillips's New World of Words," the first edition of which appeared twenty years before the passage of the Statute of Frauds. In this work (I quote from the sixth edition which appeared after the passage of the statute), the meaning of the word *merchandise* is given as follows: "Commodities or goods to trade with."

And this exact definition is given in the succeeding dictionaries of Kersey, Martin and Bailey.

It is said in the *Glossographia Anglicana Nova* that the word came into use as a term to distinguish the goods and wares exposed to sale in fairs and markets, which is affirmed also in Cowell's Law Interpreter, edition of 1708.

The word "wares" is defined for the first time in Cotgroves' Dictionary 1632 as "merchandise," and in Phillips' New World of Words as "merchandise commodity," and this is the definition successively given to it down to the time of Johnson, showing that up to the middle of the last century it was regarded as having exactly the same meaning as merchandise, and indeed such would seem to have been the understanding of Johnson, who defines it "commonly something to be sold."

The first exposition I have found of the word "*goods*" is in *Bailey's* large dictionary of 1732, who defines it simply "*merchandise*," and by Johnson, who followed as the next lexicographer, it is defined to be "movables in a house, personal or movable estate, wares, freight, merchandise."

The revised statutes substituted the word "chattels" for "wares or merchandise," but like many other changes of language in the revision, this was evidently for conciseness and not with a view of changing the sense. See note to Rev. Stat. pp. 84–85.

The lexicographers and other authorities cited show that what was understood by the words goods, wares and merchandise when the statute was enacted and for a century afterwards, were the commodities bought and sold in trade and commerce, which would not include a set of artificial teeth, as they are not bought and sold in that way, but made only for the person ordering them.

There is no very material difference between the dentist who removes the decayed teeth and replaces them with an artificial set which he

makes and adapts to the mouth of the particular person, and the surgeon who replaces a broken limb or performs any of those operations by which a lost or decayed part of the human body is replaced, as to restore the nose when it has been lost, by skilfully drawing the skin down from the forehead and by that operation constructing a new nose of the shape and appearance of the former one. They are both acts of work and labor, and to call either of them contracts of sale is to ignore the distinction which separates an agreement for work and labor from a contract for the sale of a thing. There is nothing in a set of artificial teeth which the dentist fabricates for the mouth of the person who orders them that is capable of sale in the ordinary course of trade or commerce, unless it should be the materials of which they are composed, and this may be said of Justice BLACKBURN'S illustration of the deed which the attorney draws, as the paper upon which it is written is capable at least of sale for use in the paper-mill. In fact it has been held in this country that the paper upon which a deed or note is written makes it a chattel, irrespective of what is written upon it, so as to bring it within the words of a statute authorizing suits to compel the delivery of "goods and chattels:" *Mills* v. *Gore*, 20 Pick. 28; *Clapp* v. *Shepkard*, 23 Id. 228; *Baldwin* v. *Williams*, 3 Met. 367.

The case of the ordering of the chariot, *Towers* v. *Osborne*, 1 Str. 506, appears to be the first reported case under the 17th section of the statute. The contract there was held not to be within it for the reason that the enactment meant only contracts for the actual sale of goods where the buyer is immediately answerable without time given him by special agreement and the seller is to deliver the goods immediately.

This case was decided within fifty years after the passage of the statute, and Lord LOUGHBOROUGH in commenting upon it in *Rondeau* v. *Wyatt*, 2 H. Bl. 67, said: "that it was plainly out of the statute, because it was for work and labor to be done and materials and things to be found, which is different from a mere contract of sale to which species of contract alone the statute is applicable."

Here the line of separation is clearly marked, affording a broad distinguishing rule which was recognised and acted upon for more than a century after the passage of the act.

Indeed this was understood to be the proper construction of the statute, and to be the law both in this country and in England thirty years ago by a jurist so careful, accurate and eminent as Chancellor KENT, who in the text of his Commentaries says: "That if the subject of the contract does not exist in *rerum natura* at the time of the contract, but remains thereafter to be fabricated out of the raw materials or materials not put together, it is consequently incapable of delivery and not within the statute."

And subsequently, in a note, after examining the English and American authorities, he deduced from them what he supposed to be the rule as follows: "If the article sold exists at the time *in solido* and is capable of delivery, the contract is within the statute; but if the article is to be afterwards manufactured or prepared by work and labor for de livery, the contract is not:" 2 Kent's Com. 504, 511, n., 4th ed. A rule which had at least the merit of a well defined distinction easily understood and which could be readily applied; but which in the reactionary

movement that has since taken place, has even in this country been materially departed from.

In the early part of the last century a question arose whether stock or shares in a mining company were goods, wares, or merchandise within the meaning of the 17th section, and the ground upon which the objection was raised that merchants trafficked in stocks, and at that time, 1725, very largely, may be adverted to as explanatory of the meaning that was there attached to these words.

The point was not then determined, the judges being equally divided, and it remained unsettled in England until about thirty years ago, when it was finally decided that stocks were not goods, wares or merchandise within the statute, because, said the Vice-Chancellor, Sir LAUNCELOT SHADWELL (*Duncraft* v. *Albrecht*, 11 Sim. 198), "Goods, wares or merchandise are capable of being in part delivered. If there is an agreement to sell a quantity of tallow or hemp you may deliver a part, but the delivery of a part is not a transaction applicable, as I apprehend, to such a subject as railway shares." And this decision was affirmed by the Lord Chancellor.

Stocks bought and sold by oral agreement are as fully within the evil which the statute meant to suppress as the making of a set of artificial teeth could be, and if the reason which excepts the former from the operation of the statute is that they are incapable of delivery in part, it equally applies to a set of artificial teeth, or any other separate or entire thing which cannot be delivered in part.

This ground of exception, the incapability of a partial delivery, has been distinctly repudiated in this country, and it has been held in Massachusetts and Connecticut that stocks or shares in an incorporated company are embraced by the words *goods*, *wares* and *merchandise*, that there is nothing in the nature of stocks or shares which in reason or sound policy should exempt contracts respecting them from the operation of the statute; that so large an amount of property is now invested in them, and as the ordinary *indicia* of property arising from delivery cannot take place there is a peculiar reason for extending the provisions of the statute to them; that the circumstance that they cannot be actually accepted and received is not at all conclusive, and would be a narrow and forced construction of the statute: *Tisdale* v. *Harris*, 20 Pick. 13; *North* v. *Forrest*, 15 Conn. 401; and see *Calvin* v. *Williams*, 3 Har. & J. 38. So that the grounds upon which the English Court of Chancery in the cases cited, and the common law courts in *Humble* v. *Mitchell*, 11 Ad. & E. 205; *Haseltine* v. *Singers*, 1 Wels., Hurl. & Gord. 836, and *Tempest* v. *Kilner*, 3 Mann., Gr. & Sc. 204, held that stocks were not within the statute, is relied upon in the American cases as an especial reason why they should be included.

It has been decided in Maine that the sale of a promissory note is within the statute, and in New Hampshire that it is not: *Gooch* v. *Williams*, 41 Maine 523; *Whitemore* v. *Gibbs*, 4 Foster 402.

It has been held in England that the sale of a patent right, a very important species of property at the present day, is not within the statute: *Chanter* v. *Dickinson*, 5 Man. & G. 253; whilst, if the decision in the New England cases I have cited is to be followed, it certainly would be.

This state of things, in respect to the construction and meaning of a

provision in a statute which has been in existence for nearly two centuries, is not very satisfactory, in view of what has been the experience of the past respecting it. "No act," says Mr. Evans in his notes to the collection of the statutes, "has been productive of greater litigation in settling its construction." Daines Barrington said seventy-five years ago that it was the common impression then that it had not been expounded at a less expense than one hundred thousand pounds; and Chancellor KENT, about forty years afterwards, was of the opinion that it had then cost upwards of a million pounds sterling. Lord NOTTINGHAM thought every line of it worth a subsidy, but he was the father of the act or claimed the merit of having brought in the bill: *Ash* v. *Abdy*, 3 Swanst. 664; whilst Lord MANSFIELD considered that important provisions in it, which ought to be plain to the meanest capacity, lacked the certainty requisite to make them plain to the greatest capacity: *Cadogan* v. *Kennett*, Cowp. 434; and certainly the exposition which has here been given of the inconsistency and conflict that now exist as to what was meant by a contract for the sale of goods, wares, and merchandise, either brings this provision under the reproval of Lord MANSFIELD'S observation, or shows the folly of disturbing the construction so long given to these words.

The judges who were first called upon to interpret them were as competent as any of their successors, and as well, if not better, informed of the mischief the statute was intended to remedy.

"Great regard," says COKE, "ought, in construing a statute, to be paid to the construction which the sages of the law who lived about the time or soon after it was made put upon it; because they were best able to judge of the intention of the makers at the time when it was made:" Dwarris 693; an opinion which before his day had been compressed into an axiom: "*Contemporanea expositio est optima et fortissima in leye.*"

Chief Justice BEST said in *Proctor* v. *Jones*, 2 C. & P. 532, that the Statute of Frauds was much objected to at the time of its passage, and that the judges appeared anxious to get rid of it, but in later times became desirous to give to it its full effect, and this loose statement made upon a trial at nisi prius, has recently been followed up by Justice E DARWIN SMITH, in *Mead* v. *Cole*, 33 Barb. 206, who says, "The English court started off and long continued in the practice, if not in the theory of regarding the statute unfavorably, and its simple text was persistently for many years nullified, perverted, or evaded by numerous decisions."

No reference is made by either of these judges to any authority for this statement, and I have looked in vain over the contemporary period for anything to corroborate it. Chief Justice BEST made the remark above quoted a century and a half after the statute was passed. He could have no better means of information than we possess, and so far from finding either of these statements sustained, the result of my examination convinces me that the judges interpreted the statute in no hostile spirit whatever, but experienced great difficulty in understanding some of its provisions, from what is now conceded to have been the imperfect manner in which the act was drawn; and it is difficult to see why they should seek to "evade and nullify" the seventeenth section when the effect of having contracts in writing was greatly to abridge their own labors by relieving them of the difficulties incident to interpreting agreements founded only upon parol testimony.

The courts of equity have also been assailed for invading the statute, because they compelled the performance of parol agreements where the agreement is admitted by the defendant in his answer. But courts of equity exercised this jurisdiction upon the ground that as the statute, as was expressed in its title, was "An Act for prevention of Frauds and Perjuries," there could be no danger of fraud or perjury when the defendant admitted the agreement: *Lymenson* v. *Tweed*, Prec. in Ch. 374. But this was denied in the law courts by Lord LOUGHBOROUGH, upon the ground that compelling the party to answer put him under a great temptation to commit perjury by denying the agreement, and upon the further ground that the prevention of perjury was not the sole object of the act, but "to lay down a clear and positive rule for determining when the contract of sale was complete to prevent confusion and uncertainty in the transactions of mankind," which was adding an intention by interpretation, for the preamble of the act is in these words:— "For prevention of many fraudulent practices which are commonly endeavored to be upheld by perjury and subornation of perjury, be it enacted, &c.: 29 Car. 2, c. 3; which would seem alike to be a very clear indication of the purpose for which it was passed, and the mischief it was designed to remedy, and as far as it is relied on is an answer to both of the grounds taken by Lord LOUGHBOROUGH. But weight was given by courts of equity to these grounds for insisting upon the application of the statute, and the rule as first acted upon was modified by holding that notwithstanding the admission, the defendant might insist upon the statute and then defeat any recovery upon the agreement, and though this seems to be very inconsistent, the rule as thus modified, is now regarded as impregnably settled by authority: Browne on Statute of Frauds, § 498, 2–3.

The rule in equity is at least settled. But in the courts of law, especially in the English courts, the important provision of the statute respecting contracts of sale, is as fully thrown open for judicial consideration and discussion as it was in the beginning; and what the community have a right to expect, some stability in the construction of an enactment affecting all engaged in trade or commerce, or who follow those handicrafts in which their labor and skill is combined with the material they use, would seem to be regarded as of little consequence. Under a system like ours, in which the rights of individuals are determined by positive rules and the authority of adjudged cases, it is of more importance that a rule of construction should be stable than that it should be logically correct, and if it is to be constantly fluctuating and uncertain, as appears now to be the tendency in regard to the provision respecting sales, it were as well to be relieved from the authority of precedents altogether, and follow the nations that adhere to the system of the civil law.

This disposition to extend the operation of the section respecting sales over what may be regarded as at least doubtful or uncertain cases, arises from the desire to give to the statute greater effect, as I judge from the high eulogiums pronounced by judges upon the wisdom and policy of its provisions. It is not the province of judges to expound a statute according to their opinion of its wisdom and utility, but to declare what was enacted, what was the meaning and intention of the framers of the act; and when that has been ascertained by judicial decisions long

acquiesced in, courts are not warranted in disturbing it upon the ground that greater effect ought to be given to the statute. This is not interpretation, but judicial legislation; and the only excuse that could be made for it is the one now given, that the judges would not, after the passage of the statute, carry it out or give effect to its provisions; which, so far as I can learn, has been assumed only from the construction put at the present day upon their decisions. It certainly cannot be applied to Lord LOUGHBOROUGH, who, in distinguishing the case of the ordering of the chariot as one of work and labor and therefore not within the statute, took especial occasion to commend the wisdom of the provision therein respecting sales.

If this reactionary movement grows out of the belief that it will tend to coerce men in a greater degree to put their contracts in writing, it is a vain expectation; for in the complicated and rapid transaction of business at the present day men have neither the disposition nor the time to put all they agree to in writing. Large commercial transactions are entered into and consummated every day upon oral agreements that could not be legally enforced, the only effect of the statute being to keep such contracts out of the courts, and to leave them to the good faith and integrity of the parties.

Whatever opinion may be entertained of the beneficial working of this provision of the statute as a general regulation, its effect in the courts is not to augment or promote commercial morality in particular instances; for, in my long experience in presiding at the trial of causes, I have almost invariably seen it resorted to to defeat a contract or engagement fairly entered into when, by reason of the depreciation in value of the thing ordered, or like cause, it was found convenient to get rid of the obligation And if the statute is to be carried now by judicial construction to the extent of declaring, unless it is in writing, every engagement absolutely void to make or pay for a thing the possession or transfer of which can pass by delivery—if this is to enter into and govern in all the transactions of every-day life, to every article ordered or requisite in the supply of our wants, necessities, or luxuries, then it is prescribing as a condition to the validity of the transaction what is simply impracticable, what will not and cannot be complied with, and the great bulk of such transactions will be practically left to the integrity of the parties, and the statute invoked in aid of those who wish to get rid of their engagements.

If, as we have a right to presume from the preamble, the object of the statute was to prevent fraud and perjuries, and, as a means to that end, contracts of sale were not allowed to be established by oral testimony because it was a kind of evidence that could be readily fabricated and otherwise defective and uncertain, it is to be remembered that the rules which regulate the introduction, the bearing, and the weight of testimony were not then as well understood as they are now.

Baron GILBERT'S treatise upon the law of evidence was not published until three-quarters of a century after the passage of the statute, and even that treatise, though extravagantly eulogized by Blackstone, is characterized now as a "very meagre production:" Marvin Legal Bib. 334. And how little the tests which are now every day applied to parol evidence were then understood, resorted to, or allowed, is familiar to every one who has perused the State Trials.

As a means of preventing frauds and perjuries, the statute was founded in the same general policy which excluded the parties themselves from being witnesses, or any one who had the remotest interest in the result; a practice which, after being tested and tried for several centuries, has been deliberately abandoned, both in England and in this country; a change which, so far from producing any injurious results, has aided the administration of justice.

"Great apprehensions," says Lord MACKENZIE, in his recent work upon the Roman Law, p. 331, 2d ed., "were entertained that these changes might open the door to perjury, but experience has demonstrated that the latitude allowed under the new system, all objection to credit being duly weighed, is on the whole highly beneficial, by enabling courts of law to reach the truth in a multitude of cases where the ends of justice were formerly defeated by excluding the testimony of the parties best acquainted with the facts in dispute."

Very possibly some such considerations as those I have suggested led a judge so recent and so experienced as Lord CAMPBELL to declare, it is said, that it would be better if the provision respecting sales were abolished; to which may be added the remark of Lord MANSFIELD long ago, that the principles and rules of the common law as developed and applied were calculated to attain every end sought by the statute against frauds: *Cadogan* v. *Kennett*, Cowp. 432; and the observation of COKE that in his long career he had known of but two questions occurring upon the right of descent by the common law; that the greatest questions arise not upon its rules or principles, but upon conveyances, wills, or instruments drawn by the unlearned or upon statutes: Co. Rep. preface to Part II. The enactment in the statute respecting sales may be a salutary one to protect men from having claims established against them by false testimony or the proof of which rests only in human memory, and it may be said is, as a public regulation, productive of no especial injustice where the omission to put the agreement in writing is attended by no other effect than the failure to get the profit or advantage that was anticipated from the sale. But if it is the understanding of both parties that an article is to be produced in whole or in a material degree by the work and labor of one of them, which would not at that time have been bestowed but for their agreement; then the refusal of the other party to take the article and pay for it when it is made is not merely a failure on the part of him that produced it to get the anticipated benefit, but it may subject him to a direct and absolute loss by the article being thrown upon his hands. Any rule of law or any rule of construction that will sanction this is unjust in its operation, and the public considerations upon which the statute was founded do not demand that it should be carried to this extent. It has required only contracts of sale to be in writing, and where work and labor has entered in any material degree into the creation of the thing bargained for so as to make it doubtful whether it is a contract of sale or not, courts are not called upon to find nice distinctions, or resort to rigid rules of interpretation that it may be brought within the operation of the statute, and declared void because it is not in writing.

"*Jus summum sæpe est malitia*" is the observation of the Latin poet, and we are told by COKE that the poets are cited as authorities in

expounding the law: *Authoritates philosophorum medicorum et poetarum sunt in causis allegandæ et tenendæ*, Co. Lit. 264.

I have gone into this extended examination for the reason that the case now before us is a peculiar and a close one as the statute is now interpreted.

The plaintiffs were manufacturers of an article known as "warps," and the defendants of "market nets," an article in the fabrication of which it would seem warps were used.

On the 25th of March 1867, the defendants wrote to the plaintiffs that the latter might fill an order for warps and repeated orders for them, if they could do so upon the terms upon which all warps had been furnished to the defendants for the preceding three years and at the lowest market price, and that the defendants would pay for all the warps purchased in one month at the end of the following month.

The next day the plaintiffs answered by letter that they would make 100 warps for the defendant at 70 cents per pound upon the terms proposed, cash at the end of the month following the month of delivering, to which the defendants replied by letter that they did not know their immediate wants, but said, "Meantime *we wish you to accept an order for* 50 *warps* instead of 100 at the price of 70 cents, and if cotton (the moment this order is filled) is no lower, you will have our order for the 50 more."

Within two days after the receipt of this letter, the plaintiff mailed their reply addressed to the defendants, advising them that the plaintiffs accepted the order for the 50 warps at 70 cents, and would agree to deliver another 50, if cotton were no higher nor lower at the expiration of the delivery of the first fifty; which letter having been duly mailed to the defendants was sufficient notice of an acceptance on the part of the plaintiffs of the order for 50 warps: *Vasar* v. *Camp*, 11 N. Y. Rep. 441; *Martin* v. *Frith*, 6 Wend. 106. Twelve of the warps were delivered during the months of March and April, having been sent for by the defendants' superintendent, and were paid for by the defendants. The remaining thirty-eight were finished, and the plaintiffs requested the superintendent to receive them, but he did not.

The plaintiffs then advised the defendants by letter on the 30th of April 1867 that the thirty-eight had been finished some time; that the superintendent had been requested to receive them but did not, and that the plaintiffs would send them to the defendants' factory on a specified day or sooner if requested, to which the defendants replied by letter in these words:—

"We beg leave to say that we accept *no warps* which you have made without order and contrary to any statement of ours. When we want warps we order them or send for them, and when we don't order them, and when the *price of cotton* upon which any order was based as a price is so much lowered, the case is altered; and, too, the manufacture of nets for the present has long since since ceased with us. Warps concerning which you are so anxious to sell were not made for us any more than for any other manufacturer, and we have authorized no manufacturer to pile up warps for us, but that as we wanted them we would order."

The disingenuousness of this reply is apparent. The letter itself very clearly discloses that the reason why they did not wish to take them was, that they had no immediate use for them; that they had stopped the manufacture of nets, and that when they resumed it, they

could, in consequence of the fall in the price of cotton, get their warps made at a cheaper rate.

The day after the receipt of this letter the plaintiffs sent the 38 warps in a wagon to the defendants' mills in Paterson, New Jersey, and tendered them to the defendants' superintendent, who replied that his instructions from Mr. Hoffman were not to receive them.

Twenty days after the president of the plaintiffs' company called upon the defendant Mr. Hoffman, and informed him that the plaintiffs had the balance of his order, 38 warps, and requested him to receive them, which he declined, saying that he had not ordered them.

They were then worth about 63 cents a pound.

The plaintiffs waited until the 19th of June 1867, when they advised the defendants by letter that they had sent the 38 warps to an auctioneer in this city, to be sold at auction, informing the defendants of the place and of the day and hour of the sale, and that they would hold them responsible for the difference between the contract price and the price they might bring. They were accordingly sold at auction at the time and place named for 43 cents a pound, the sale having been duly advertised, and a large number of persons being present. The contract price for the thirty-eight sold was $1064. They brought at the auction sale $617.39, making a difference of $446.61, which amount the plaintiffs have recovered in this action.

The defendants' superintendent testified that the warps were such as the plaintiff generally manufactured and had on hand.

Mr. Ridgway, the president of the plaintiffs' company, testified that he did not know whether they had any warps on hand when the first letter was received from the defendants, nor could he tell how many they had on hand during the subsequent correspondence; that they were manufacturing similar warps for other persons at the same time; that they were coming off continually every half hour as they were manufacturing this class of goods all the while; that he could not say that they were ready all the time to deliver the whole of them; that whenever a demand was made they were ready to fill the order; but I do not understand by this remark that they were ready to fill the order for the fifty warps when it was received, but that they were ready to supply the defendants as they wanted them, for the defendants' superintendent testified that the plaintiffs' superintendent came to the defendants' mills and said, "our folks and your folks have made an agreement about warps," and that he, the defendants' superintendent, was to receive the warps as and when he wanted them, and he swore that he sent for six warps at a time; that he sent twice and received six warps each time. Mr. Hoffman, the defendant, having told him that he was to go to the plaintiffs and get warps when he wanted them.

Mr. Ridgway, the president, also testified that the cotton was not bought for the defendant nor the yarn in the spool made for them particularly; that the plaintiffs were in the habit of *manufacturing* this kind of warp; that they seldom kept them on hand and had frequent orders for them; that they were not standard articles; that there was no market price for such warps at the time of the sale, and that they are an article not usually sold at auction, the witness never having seen any sold in that way except in this instance.

I think this must be regarded as an agreement between the plaintiffs

and the defendants for the manufacture of the fifty warps, and that it was not a contract of sale within the meaning of the statute. It has several distinguishing features. In the first place the article is one of a peculiar kind. In the next place the number contracted for was to be produced and delivered as the defendants wanted them. In the third, it is a fair presumption from the evidence that they were all manufactured after the order for them was accepted. Wilson, the defendants' superintendent, said they were such as the plaintiffs generally manufactured and had on hand.

Ridgway, the president, could not say whether they had usually warps of this description on hand from the time that the contract was made and the residue of the warps was ready for delivery, but left it to be inferred that they had not, by the statement that it was the spring of the year which he declared was generally a busy time with the plaintiffs, and the testimony of the plaintiffs' superintendent is explicit upon this point, for he swears that the plaintiffs did not in the busy season have these warps on hand. He was the one who would necessarily know, and his statements must be regarded as decisive, there being nothing to impeach it in the testimony of the plaintiffs or in the loose general statements of the defendants' superintendent. In the fourth place, the evidence warrants the conclusion that the agreement contemplated that the warps were to be of the plaintiffs' manufacture. This I think is indicated sufficiently by a passage in the very letter in which the order is given by the defendants for the fifty warps and the promise held out of a further order for fifty more, which passage is in these words at the end of the letter:—"Finding your warps *uniform*, we shall be *faithful to you*," which brings the case within the distinction relied upon in *Hight* v. *Ripley*, *supra*, that it is the labor and skill of the person to whom the order is given, combined with the material that is contracted for and to which the other party is entitled, and which distinguishes it from *Gardner* v. *Joy*, in which, to quote from the work of Mr. Browne, it was clearly no part of the bargain that the vendor should manufacture the candles: Browne on the Statute of Frauds, § 308, 3d ed. And lastly. Between the time when the order was accepted—the 29th of March 1867—and the 30th of April 1867, when the defendants were advised by letter that the "balance of the order had been finished some time," there was a rapid depreciation in the value of the article, cotton having fallen, during the months of March and April, from 85 to 65 cents a pound, and afterwards down to 60 cents, a point reached on the 21st of June 1867, in view of which it might be that the plaintiffs would not have made those fifty warps at that time but for the fact that they had an order from the defendants to manufacture that specific quantity at a specific price.

Though I do not regard this as a contract of sale, and think that our decision should be put upon that ground as the proper disposition of the case, still, if it were necessary to hold it to be a contract of that description within the meaning of the statute, the judgment entered upon the report of the referee would still be correct.

It may be doubtful if there was sufficient proof of a memorandum in writing of the contract subscribed by the parties to be charged: 2 Rev. Stat. 140, § 3. It is not necessary that it should be comprised in one paper. It may be embraced in several, but they must be connected

with and refer to each other, and the mutual relations of the writings must appear upon their face, and cannot be established by parol evidence, it being the policy of the statute to take the cases enumerated entirely out of the reach of verbal testimony: *Wright* v. *Weeks*, 25 N. Y. 153; *Stocker* v. *Partridge*, 2 Robt. S. C. 193; Greenl. on Ev. § 268; Browne on the Statute of Frauds 346, 3d ed., and cases there cited.

In the case before us, the defendants' letter was simply a proposal that the plaintiffs should accept an order for fifty warps, instead of one hundred, at the price of seventy cents.

This was the exact language used, and the existence of a contract or not depended on the acceptance of the order upon the terms proposed.

The acceptance was by letter, but the contents of this letter, as well as the fact that it was mailed to the defendants, was established by parol evidence.

No exception was taken to the proof, and as the letter is presumed to have reached the defendants in due course of mail and might have been produced by them before the referee, it may be that this was sufficient proof of an acceptance in writing: *Watts* v. *Anisumt*, 6 L. T. N. S. 252. But if there be doubt on this point, there was sufficient evidence of a delivery and acceptance of a part of the warps to take the case out of the operation of the statute. The agreement was an entirety. It was for fifty warps at a fixed price.

This appears by the letter in which the order was given, and by the plaintiffs' letter of acceptance, and when the latter letter, addressed to the defendants in New York, was mailed to them by the plaintiffs at Paterson, in New Jersey, the contract was complete: *Vassar* v. *Camp*, 11 N. Y. 411, and cases there cited.

The correspondence did not designate when the warps were to be delivered, but it appears by the testimony of Ridgway, King and Wilson, that they were to be delivered as the defendants' superintendent wanted them, and whether that were so or not the delivery and acceptance of a portion of them was sufficient to take the case out of the statute.

It is not essential under our statute that the delivery and acceptance of a part of the goods should take place at the time of the making of the contract, but the delivery and acceptance of a part afterwards will suffice: *Sale* v. *Darragh*, 2 Hilton 201, 202; *McKnight* v. *Dunlap*, 1 Seld. 537; *Sprague* v. *Blake*, 20 Wend. 61.

Twelve of the warps were delivered to the defendants' superintendent, who swore that he was instructed by the defendants to go and get the warps when he wanted them. He sent twice to the plaintiffs, each time for six, and they were delivered to him; and to put at rest all question of the delivery and acceptance of a portion of the quantity ordered, the defendants paid for these twelve warps by their checks on the 29th of April, and on the 22d or 23d of May following: *Outweiler* v. *Dodge*, 6 Wend. 397.

The remaining questions in the case may be summarily disposed of.

The defendants having refused to accept and pay for the residue of the warps, the plaintiffs had the right to sell them and hold the defendants for the deficiency: *Smede* v. *Taylor*, 5 Johns. 395. They gave the defendants notice of the time and place of sale, although strictly even this was not necessary: *Lewis* v. *Gurder*, 49 Barb. 606.

The sale was by public auction, which, as a general rule, is the appro-

priate and proper way to ascertain the value of the thing at the time, and if, as appeared, there was no market price for warps at that time and that they were an article not usually sold at auction, it does not lie with the defendants to complain; for, having had ample notice of the sale, they might have attended it and protected themselves by buying the warps if the price they brought was below their value.

The report of the referee should be affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

COURT OF CHANCERY OF NEW JERSEY.[3]

SUPREME COURT OF NEW YORK.[4]

SUPREME COURT OF PENNSYLVANIA.[5]

SUPREME COURT OF VERMONT.[6]

ATTORNEY.

Disbarment—Causes for.—An act highly discreditable but not infamous and not connected with an attorney's duties, will not give the court jurisdiction to strike him from the roll: *Dickens' Case*, 67 Pa.

An attempt to make an opposing attorney drunk to obtain an advantage of him in the trial of a cause, is good ground for striking an attorney from the roll: *Id.*

AGENT. See *Usury.*

Payment to Agent.—It is well settled that a debtor is authorized to pay an agent any sum which is due upon a security which has been intrusted to the agent by the holder, for the purpose of collecting any part of it; as where the agent has been authorized to receive the interest only, but receives the principal: *Doubleday* v. *Kress*, 60 Barb.

Indeed the authorities go to the extent of holding a payment valid, made to an agent who is merely intrusted with the possession of the security, without express authority to receive or collect any part of it. The ostensible authority attributed to a party to whom is intrusted an instrument to secure the payment of money, is to receive payment according to its terms. Per TALCOTT, J.: *Id.*

The principal is, as to third persons not having any notice of a limitation, bound by the ostensible authority of the agent, and cannot avail himself of secret limitations upon the authority and repudiate the agency,

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[1] From J. Wm. Wallace, Esq., Reporter; to appear in vol. 12 of his Reports.

[2] From Hon. N. L. Freeman, Reporter; to appear in 54 Ills. Reports.

[3] From C. E. Green, Esq.; to appear in vol. 7 of his Reports.

[4] From Hon. O. L. Barbour; to appear in vol. 60 of his Reports.

[5] From P. F. Smith, Esq., Reporter; to appear in 67 Penna. State Reports.

[6] From W. G. Veazey, Esq., Reporter; to appear in 43 Vt. Reports.